b&g
Bradley & Guzzetta, LLC

950 UBS Plaza
444 Cedar Street
Saint Paul, MN 55101
P/ (651) 379-0900
F/ (651) 379-0999

Attorneys at Law
Michael R. Bradley†
Stephen J. Guzzetta*
Brian F. Laule

Legal Assistants
Thomas R. Colaizy
Joseph Krueger

Of Counsel
Thomas C. Plunkett
Gregory S. Uhl
J. David Abramson

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November 28, 2006

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VIA FEDEX

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, Maryland 20743

Re: Comments in MB Docket No. 06-189

Dear Ms. Dortch:

Attached for filing *In the Matter of Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, are an original and four (4) copies of the Comments of the North Suburban Communications Commission (the "Comments"). Additional copies of the Comments are being filed with Best Copy and Printing, Marcia Glauberman and Anne Levine via first-class mail.

I have also enclosed an additional copy of the Comments. Please date-stamp that copy and return it to me in the enclosed postage-prepaid envelope.

Very truly yours,
BRADLEY & GUZZETTA, LLC

Stephen J. Guzzetta

Attachments

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www.bradleyguzzetta.com

†Also admitted in Wisconsin
*Also admitted in Massachusetts and the District of Columbia

Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	MB Docket No. 06-189

COMMENTS OF THE NORTH SUBURBAN COMMUNICATIONS COMMISSION

These Comments are filed by the North Suburban Communications Commission ("NSCC") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"), the National League of Cities ("NLC"), the National Association of Counties ("NACo"), the United States Conference of Mayors ("USCM"), and other national municipal organizations. Like the national municipal organizations, the NSCC believes that local governments want and encourage competition in the video programming marketplace. The local franchising process in Minnesota works and helps to ensure that all residents share in the benefits that increased competition brings to a community.

The NSCC previously filed Comments in the competitive franchising proceeding, MB Docket No. 05-311, the Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 (the "Video Franchising Comments"). Because this Notice of Inquiry raises many of the same issues that were addressed by our earlier Video Franchising Comments, we are attaching a copy of those Video Franchising Comments for inclusion in this proceeding.[1]

I. <u>Wireline Video Competition in the NSCC Franchise Area.</u>

The NSCC is a municipal joint powers commission consisting of the cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony, and Shoreview, Minnesota (the "Member Cities"). The total population represented by the NSCC is approximately 125,000. There is currently one franchised cable operator serving the Member Cities. The NSCC currently has procedures in place for receiving and reviewing competitive cable franchise applications and has expeditiously acted on such applications in the past. In 2000, for example, the NSCC was prepared to recommend that its Member Cities award an additional cable franchise to Everest Minnesota, LLC. That company, however, opted to pull out of the Minneapolis/St. Paul market before completing the franchising process.

II. <u>The Existing Regulatory Structure has Successfully Promoted Broadband Deployment and the Widespread Availability of Advanced Services.</u>

The Federal Communications Commission (the "FCC") first created and Congress later codified the existing dual federal-local regulatory process for the regulation of cable systems that distinguishes between matters of national and local concern.[2] As far back as 1972, the FCC recognized the importance of local involvement

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[1] *See* Exhibit A hereto. The Video Franchising Comments are incorporated herein by reference.

[2] For a more detailed history of the development of the federal-state dual regulatory structure that is applicable to cable systems, *see* Kreucher, John, *Forced Franchising: Why Telephone Industry Calls for "Shall Issue" Video Franchising Shouldn't Be Answered* (October 2006) available at <www.icma.org/main/Id.asp?ldid=20177&p=1>.

in the development of cable systems and established "a deliberately structured dualism" that acknowledged local government expertise concerning public rights-of-way management and the unparalleled ability of local governments to respond effectively to service complaints.[3] This dual regulatory structure was also followed by the State of Minnesota through the adoption of a detailed act regulating cable communications systems (the "Minnesota Cable Act").[4] The Minnesota Cable Act addresses the granting of additional franchises to telecommunications and cable companies and prohibits cities from granting additional franchises that are more favorable or less burdensome relating to franchise fees, PEG support and area served.[5] This level playing field requirement has been interpreted by Minnesota courts to require competitive cable franchises and pre-existing franchises to be similar, thereby providing local franchising authorities with the flexibility to meet local needs, while establishing conditions that permit all competitive cable system operators to compete fairly.[6] Given the promised deployment of cable service[7] by telephone companies and the existence of a longstanding state/local statutory process that contemplates the award of additional competitive cable franchises,[8] the

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[3] *In the Matter of Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems*, Cable Television Report Order, 36 FCC2d 143, 207 (Rel. Feb. 3, 1972).
[4] *See* Minnesota Statutes Chapter 238, Minn. Stat. § 238.01, *et seq.*
[5] *See* Minn. Stat. § 238.08, subd. 1(b). *See also WH Link, LLC v. City of Otsego,* 664 N.W.2d 390 (Minn. Ct. App. 2003) (Chapter 238 of Minnesota Statutes is applicable to telephone companies certified as open video systems and requires and requires competitive franchises to be similar to pre-existing franchises).
[6] *Id.*
[7] The NSCC is concerned that some telephone companies, such as AT&T, are reportedly claiming that their video product is not a "cable service." The NSCC believes that the video services offered by Verizon, AT&T and other telephone companies clearly fall within the definition of cable service.
[8] *See, e.g.*, Minn. Stat. §§ 238.081 and 238.084.

NSCC anticipates that there will be wireline competition in the Member Cities in the near future.

Over the last thirty years, the existing dual regulatory structure has worked well. As pointed out in the NSCC's Video Franchising Comments, there are already a number of communities in Minnesota that have two competing wireline cable service providers.[9] This system is far more effective than having an under-funded federal or state agency, without adequate staff and/or expertise, addressing important issues of local concern, such as rights-of-way management, public safety and customer service.

Under the dual regulatory structure established by the FCC and Congress and followed by the State of Minnesota, both of which preserve and rely on local franchising, and maintain local authority over the valuable and scarce public rights-of-way, the cable industry in Minnesota has flourished. By way of example, cable operators in Minnesota have invested in advanced networks with an approximate asset value of over $3 billion. Those networks currently serve approximately one million subscribers throughout the state. Moreover, under the existing regulatory scheme, high-speed Internet and broadband services have thrived, as evidenced by the fact that there is over a 99 percent broadband deployment rate throughout the cable footprint in Minnesota. Further, while working cooperatively with local franchising authorities in Minnesota within the parameters of current state and federal law, cable operators in Minnesota have invested more than $500 million in broadband infrastructure and related equipment over the past five years. This data clearly shows that local franchising has not inhibited the deployment of advanced networks and new services in Minnesota. Rather, the local

[9] *See* Video Franchising Comments at 45.

franchising process has ensured that almost all citizens in the NSCC's franchise area have access to these networks and services.

The NSCC is currently served by Comcast, which through its predecessors in interest, has achieved a 100 percent high-speed broadband deployment rate throughout its network in Minnesota. Comcast, through its predecessors in interest, has also invested over $400 million in recent network upgrades in Minnesota, has 11,100 constructed network miles of plant in Minnesota, serves 110 municipalities and provides service to over 50% of the 1.1 million homes passed by its cable system. All of this was accomplished under the dual regulatory structure codified in federal and state law. Moreover, it is important to recognize that the NSCC and most cities in Minnesota have utilized the current regulatory structure to negotiate reasonable build-out requirements in their franchises that ensure their citizens, without regard to income, have the opportunity to avail themselves of Comcast's state-of-the-art cable television and broadband services. Because the existing regulatory environment is actually promoting the roll-out of advanced broadband networks to a significant part of the population, the FCC should acknowledge the benefits of local franchising and refrain from preempting or limiting local franchising authority.

The NSCC recognizes that there has been a significant effort by telephone companies to eliminate local franchising through federal and state legislation. In arguing against local franchising, the phone companies have attempted to create a perception that cities are somehow a "barrier to entry" for phone companies entering into the video business. This, of course, is not true since all cable franchises are non-exclusive and a competitor can request an additional franchise at any time. Indeed, federal law specifically provides that the Member Cities cannot unreasonably refuse to award an additional competitive cable franchise.[10] Consistent with federal law, the Member Cities have a non-exclusive cable franchise with Comcast. Neither the Member Cities nor the NSCC has ever denied a competitive cable franchise application. It should also be noted that federal and state law provide the NSCC and the Member Cities with the flexibility to negotiate build-out requirements that meet the needs of the community, while accommodating a potential competitor's cash flow requirements and capital limitations.

To further promote competition, the NSCC, in cooperation with some of the largest franchising authorities in the State of Minnesota, is developing even more streamlined policies and procedures for receiving and reviewing additional franchise applications (the "Policies"). The Policies will be shared with the League of Minnesota Cities and the Minnesota Association of Community Telecommunications Administrators. These Policies will provide for an expedited franchising process, including the approval as to form of an additional franchise, while eliminating perceived regulatory and economic "barriers to entry," to the extent possible and consistent with applicable law. In the event that a broadband service provider, local exchange carrier or any other provider of wireline multichannel video programming makes the business decision to offer service to residents of the Member Cities, the NSCC will be prepared to process expeditiously any request for an additional competitive cable franchise. There is no regulatory barrier preventing competition in Minnesota or the Member Cities.

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[10] *See* 47 U.S.C. § 541(a)(1).

III. Conclusion.

The dual regulatory structure that the FCC initially adopted and Congress subsequently codified has fostered tremendous growth in cable service and broadband services. In Minnesota, state law adequately addresses the granting of additional franchises and local franchising authorities are proactively assuring an expedited process for granting additional competitive cable franchises. For these reasons, there are no actual regulatory and economic barriers to entry that need to be eliminated and the FCC should therefore forbear from taking any action to preempt local franchising pursuant to this proceeding or any other pending proceeding.

CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The undersigned signatory has read the foregoing Comments of the North Suburban Communications Commission and to the best of my knowledge, information and belief formed after reasonable inquiry, they are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and are not interposed for any improper purpose.

Respectfully submitted,

Stephen J. Guzzetta
Michael R. Bradley
BRADLEY & GUZZETTA, LLC
444 Cedar Street
Suite 950
St. Paul, Minnesota 55101
(651) 379-0900
guzzetta@bradleyguzzetta.com

Attorneys for the NSCC

November 28, 2006

EXHIBIT A

Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

INITIAL COMMENTS OF THE BURNSVILLE/EAGAN TELECOMMUNICATIONS COMMISSION; THE CITY OF MINNEAPOLIS, MINNESOTA; THE NORTH METRO TELECOMMUNICATIONS COMMISSION; THE NORTH SUBURBAN COMMUNICATIONS COMMISSION; AND THE SOUTH WASHINGTON COUNTY TELECOMMUNICATIONS COMMISSION

Stephen J. Guzzetta
Michael R. Bradley
BRADLEY & GUZZETTA, LLC
444 Cedar Street
Suite 950
St. Paul, Minnesota 55101

February 10, 2006

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SUMMARY

The Burnsville/Eagan Telecommunications Commission, the City of Minneapolis, Minnesota, the North Metro Telecommunications Commission, the North Suburban Communications Commission and the South Washington County Telecommunications Commission (the "LFAs") are local government units that administer and enforce cable franchises, receive and review franchise applications, and in some cases, award cable franchises. The LFAs therefore have a vested interest in local cable franchising, and would be significantly impacted by any action taken by the Federal Communications Commission ("the Commission" or "the FCC") pursuant to its November 18, 2005, Notice of Proposed Rulemaking ("NPRM").

The FCC Lacks Authority to Preempt or Interfere with Local Franchising

The LFAs do not believe that the FCC has the authority to preempt or modify local cable system franchising procedures and requirements. This is due, in part, to the fact that Congress designated the courts as the fora where franchising disputes are to be heard. Moreover, Congress has not explicitly empowered the FCC to interfere with or to preempt local franchising processes in Section 621(a) of the Cable Communications Policy Act of 1984, as amended (the "Cable Act"), or elsewhere in the Communications Act of 1934, as amended (the "Communications Act"). In other words, there is no clear and unmistakable Congressional intent to preempt local franchising requirements, processes and procedures. Consequently, the FCC may not rely on § 621(a)(1) to eviscerate local franchising processes (either prior to or after final action has been taken on a competitive franchising application). Nor may the FCC expand the scope of § 621(a)(1) beyond the plain language adopted by Congress.

The Commission also relies on Title I of the Communications Act for authority to preempt local franchising processes and procedures. However, Title I of the Communications

Act cannot function as an independent source of authority, since any authority granted therein must be rooted in specific substantive provisions elsewhere in the Communications Act. As indicated above, nowhere in the Communications Act is the FCC explicitly empowered to restrict or revise local franchising processes. If Congress had intended to enable the FCC to intrude into a fundamental area of state/local sovereignty, like franchising, it would have had to make its intent clear and unmistakable – it did not do so. To the contrary, Congress has made clear that it intended to preserve local franchising. Because public property is at stake, any action by the FCC to preempt or restrict local franchising would likely raise Fifth Amendment issues.

Local Franchising Promotes Federal Objectives

The Cable Act sets forth a number of Congressional objectives for cable communications, including: the promotion of competition; ensuring that cable systems are responsive to the needs of the local community; and assuring that cable communications provide the widest possible diversity of information sources and services to the public. Local franchising serves and promotes these objectives. For instance:

- The LFAs' franchises are non-exclusive, and contain level playing field requirements which encourage fair competition. Contrary to industry assertions, there is nothing inherently anti-competitive about level playing field provisions which afford local governments the flexibility to establish competitively neutral franchise commitments.
- The LFAs' franchises contain requirements for PEG capacity and institutional networks which advance Congress' desire for diverse information sources.
- The LFAs' franchises are specifically tailored to meet the needs and interests of the community. A one-size-fits-all approach to franchising would invariably result in legitimate and lawful needs and interests going unmet in some cases.

In addition, the LFAs' franchises support the growth of cable systems through reasonable system build-out requirements that also satisfy Congress' directive to prevent economic redlining. Contrary to telephone industry claims, local build-out requirements should not be barrier to entry, because the Cable Act obligates local franchising authorities to give new entrants a reasonable period of time to build their system throughout the franchise area.

<u>The Local Franchising Process Enhances Competition and Creates Opportunities</u>

The LFAs support fair competition. Indeed, the LFAs encourage wireline competition in the delivery of video programming because it has been shown to reduce rates. In Minnesota, competition among providers is encouraged by the streamlined franchising process set forth in state law, which spells out minimum franchise application contents and specifies minimum local franchise requirements. Given the existence of clearly defined state franchise procedures, the entire local franchising process can be completed in a relatively short period of time, particularly if the applicant is reasonable and cooperative. Market entry is also streamlined by the existence of municipal joint powers commissions. These commissions frequently review franchise applications and negotiate franchises on behalf of their member cities. Consequently, a franchise applicant can submit a single application covering numerous jurisdictions, and negotiate multiple franchises with a single entity. The success of local franchising practices in Minnesota is underscored by the fact that forty-seven communities have awarded competitive cable franchises.

Aside from establishing certain procedures and requirements for local cable franchising, Minnesota law has established limited market entry requirements for telecommunications service providers. For instance, under state law, local governments cannot franchise telecommunications systems and possess limited right-of-way management authority over telecommunications right-of-way users. Accordingly, advanced broadband networks can be constructed and operated without invoking the local cable franchising process (provided video service is not offered and cable television-specific equipment and facilities are not installed). Thus, local cable franchising cannot be said to impede the deployment of advanced broadband networks in Minnesota.

It should also be noted that video competition is in fact developing, consistent with federal goals. In this regard, competitive franchises are being awarded by a number of local governments around the country, which suggests that true barriers to entry do not exist. In the event that a franchise application is denied, Congress has specified a clear judicial path for review of the franchising authority determination. Far from being a barrier to entry, the franchise process ensures the needs and expectations of all parties are met and the rights of all participants are protected.

Conclusion

Local cable franchising is enabling video competition around country, and in so doing is promoting the deployment of advanced broadband networks. Thus, the dual regulatory scheme created by Congress is working, and should not be disturbed. Abstention is particularly appropriate in this case because there is no incontrovertible evidence showing that local franchising is inhibiting multichannel video distribution competition. As importantly, the FCC possesses no plenary authority to preempt or restrict local franchising processes under Title I or Title VI of the Communications Act. If the Commission was to supersede or modify local franchising processes and procedures, Fifth Amendment issues would likely be raised.

Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992	)))))	MB Docket No. 05-311

INITIAL COMMENTS OF THE BURNSVILLE/EAGAN TELECOMMUNICATIONS COMMISSION; THE CITY OF MINNEAPOLIS, MINNESOTA; THE NORTH METRO TELECOMMUNICATIONS COMMISSION; THE NORTH SUBURBAN COMMUNICATIONS COMMISSION; AND THE SOUTH WASHINGTON COUNTY TELECOMMUNICATIONS COMMISSION

I. INTRODUCTION.

These comments are filed on behalf of the City of Minneapolis, Minnesota and the following municipal joint powers commissions in the above-captioned proceeding: the Burnsville/Eagan Telecommunications Commission (a municipal joint powers commission consisting of the cities of Burnsville and Eagan, Minnesota); the North Metro Telecommunications Commission (a municipal joint powers commission consisting of the cities of Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes and Spring Lake Park, Minnesota); the North Suburban Communications Commission (a municipal joint powers commission consisting of the cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview, Minnesota); and the South Washington County Telecommunications Commission (a municipal joint powers commission consisting of the municipalities of Woodbury, Cottage Grove, Newport, Grey Cloud

Island Township and St. Paul Park, Minnesota) (collectively, the "LFAs").[1] The LFAs represent *twenty-five cities and townships in Minnesota, with a combined population of over 750,000.* Comcast of Minnesota, Inc., Comcast of Minnesota/Wisconsin, Inc. and Time Warner Cable, Inc. are the incumbent wireline cable service providers in the franchise areas represented by the LFAs.[2]

The LFAs are generally responsible for administering and enforcing their local cable franchises. The LFAs also receive and resolve consumer complaints regarding cable service and cable modem service. In addition, the LFAs are empowered to receive and review applications for additional franchises and to negotiate the terms and conditions of competitive franchises. Under applicable state law, the City of Minneapolis, Minnesota, and the South Washington County Telecommunications Commission are authorized to award or deny franchises permitting the use of public rights-of-way by cable system operators.

Many of the LFAs operate video production facilities, and are actively involved in producing government access programming and/or making studios, edit suites and equipment available for public access programming. Additionally, several of the LFAs oversee and/or operate institutional networks which connect government facilities and are utilized for advanced video, voice and data applications. Thus, the LFAs have a significant interest in cable system franchising, and would be directly affected by any action the Federal Communications

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1 With the exception of the South Washington County Telecommunications Commission, the member cities of the various joint powers commissions award cable franchises to applicants. The joint powers commissions are generally responsible for enforcing and administering their member cities' cable franchises. The South Washington County Telecommunications Commission, however, is also empowered to award cable franchises on behalf of its member cities.

2 Comcast of Minnesota, Inc., and Comcast of Minnesota/Wisconsin, Inc., are referred to in these comments as "Comcast." Time Warner Cable, Inc. is referred to herein as "Time Warner Cable."

Commission (the "Commission" or the "FCC") might take pursuant to its November 18, 2005, *Notice of Proposed Rulemaking ("NPRM").*[3]

The LFAs' comments will address the questions and issues raised in ¶¶ 10, 12, 14-17, 19-20 and 23 of the FCC's NPRM. As a general principle, the LFAs do not believe the FCC possesses the authority to preempt or modify local cable system franchising procedures and requirements pursuant to: (i) Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (the "Cable Act"), 47 U.S.C. § 541(a)(1), as amended; (ii) Section 1 of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. § 151; or (iii) Section 4(i) of the Communications Act, 47 U.S.C. § 154(i). If the Commission was to preempt or otherwise alter local franchising procedures and requirements based on the foregoing statutory provisions, the LFAs believe significant Constitutional issues would be raised. Moreover, if the Commission adopts preemptive regulations based on speculative, ambiguous and unsupported comments from regional bell operating companies, such rules would necessarily be arbitrary and capricious.

As a matter of sound public policy, the LFAs support fair competition and the flexibility afforded by current law to ensure that local needs and interests are met through the local franchising process, consistent with Congressional intent. To date, there is no concrete, incontrovertible evidence that proves franchising inhibits or otherwise bars the development of multichannel video competition and the deployment of advanced communications networks.

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[3] *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311 (Rel. Nov. 18, 2005).

Indeed, the cable television industry has thrived under the existing franchising scheme and has spent billions of dollars upgrading its networks.[4]

There is substantial evidence that franchising of cable systems brings significant benefits to local communities and their residents. For example, public, educational and governmental ("PEG") access channel capacity dedicated in franchise agreements (i) ensures that governmental institutions can communicate effectively with their constituents, (ii) provides transparency in the policy-making process, (iii) makes informative and unique programming accessible to a broad audience, and (iv) allows diverse viewpoints to be exchanged effectively. Likewise, institutional networks constructed pursuant to local franchises enable local governments and educational institutions to communicate with each other and the public in a secure, efficient, effective and economical manner.

In the same vein, all of the LFAs' franchises contain customer service standards with which the franchised cable operator must comply. These standards, which are generally based on the FCC's minimum customer service regulations, ensure that Comcast and Time Warner Cable provide quality service and treat customers fairly. The need for customer service standards, and local enforcement of those standards, is underscored by the number and nature of subscriber complaints received by the LFAs. If the FCC was to take on the task of addressing subscriber complaints on a national basis, the administrative burden would be enormous. In addition to customer service standards, the LFAs' franchises contain build-out requirements for the entire franchise area (subject to certain density requirements). These build-out provisions help to ensure that cable service, and the other services offered over cable systems, are available

[4] Cable operators spent nearly $100 billion between 1996 and mid-2005 upgrading their systems, which included the introduction of fiber-optics and increased capacity. *See* National Cable & Telecommunications Association, *2005 Mid-Year Industry Overview* 7 (2005), *available at* www.ncta.com.

to as many people as possible. By preventing redlining, the LFAs are furthering the federal goal that advanced services and capabilities should be available to all, without regard to income.[5]

Finally, as a general matter, the LFAs' cable franchises delineate the terms and conditions under which Time Warner Cable and Comcast may use public rights-of-way. Local right-of-way requirements are a fundamental and extremely significant exercise of state and local sovereignty and implicate local police powers. Indeed, it is through right-of-way management provisions in local cable television franchises (and the codes and standards incorporated into cable franchises) that the LFAs are able to protect public health, safety and welfare by regulating the local conduct of cable operators in local streets and on public property.

II. LOCAL CABLE SYSTEM FRANCHING IS CONSISTENT WITH AND PROMOTES FEDERAL OBJECTIVES.

A. The LFAs' Local Franchises Reflect and Promote Federal Objectives for Cable Systems and Broadband Deployment.

Paragraph 10 of the NPRM queries "whether in awarding franchises, LFAs are carrying out legitimate policy objectives allowed by the [Communications] Act or are hindering the federal policy objectives of increased competition in the delivery of video programming and accelerated broadband deployment." In responding to this query, it is important to emphasize at the outset that the LFAs support and encourage fair competition in the delivery of multichannel video programming and the prompt deployment of advanced broadband networks consistent

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[5] *See, e.g.*, Section 621(a)(3) of the Cable Act, 47 U.S.C. § 541(a)(3). The legislative history for § 541(a)(3) states that: "cable systems will not be permitted to 'redline' (the practice of denying service to lower income areas). Under this provision, a franchising authority in the franchising process shall require the wiring of all areas of the franchise area to avoid this type of practice." H.R. Rep. No. 934, 98th Cong. 2nd Sess. 59, *reprinted in* 1984 U.S.C.C.A.N. 4655, 5696 (1984). *See also Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, 19 FCC Rcd 20540 (2004) ("Section 706 of the Telecommunications Act directs both the Commission and the states to encourage deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis.").

with applicable federal, state and local law.[6] It is also important to recognize that the promotion of competition in cable communications[7] is but one fundamental purpose of the Cable Act and the Communications Act. Other significant purposes of the Cable Act articulated by Congress include: establishing "franchise procedures and standards . . . which assure that cable systems are responsive to the needs and interests of the local community;"[8] and assuring "that cable communications provide the widest possible diversity of information sources and services to the public . . . ."[9] Congress concluded that all of these goals were best met through the local franchising process (with certain clearly defined federal limitations and mandates). Indeed, in enacting the Cable Act, Congress specifically stated that it was preserving existing cable franchising authority.[10]

[6] *See, e.g.*, 47 U.S.C. § 541(a)(3) (prohibiting economic redlining), 47 U.S.C. § 541(a)(4)(A) (requiring a franchising authority to allow a new entrant's cable system a reasonable period of time to serve all households in the franchise area), and Minn. Stat. § 238.08, subd. 1(b) (generally specifying that no municipality can grant an additional cable service franchise on terms more favorable or less burdensome than those in the existing franchise with respect to area served).

[7] *See* 47 U.S.C. § 521(6).

[8] 47 U.S.C. § 521(2).

[9] 47 U.S.C. § 521(4).

[10] *See* H.R. Rep. No. 934 at 26, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4663 (1984) (Congress intended that "the franchise process take place at the local level where [local] officials have the best understanding of local communications needs and can require cable operators to tailor the cable system to meet those needs."). Congress also stated that "the ability of a local government entity to require particular cable facilities (and to enforce requirements in the franchise to provide those facilities) is essential if cable systems are to be tailored to the needs of each community [and the Cable Act] explicitly grants this power to the franchising authority." *Id.* According to the House Report on H.R. 4103, whose terms were later incorporated into the Cable Act, "cable television has been regulated at the local government level through the franchise process . . . . H.R. 4103 establishes a national policy that clarifies the current system of local, state and federal regulation of cable television. This policy continues reliance on the local franchising process as the primary means of cable television regulation . . . . The bill establishes franchise procedures and standards to . . . assure that cable systems are responsive to the needs and interests of the local communities they service." H.R. Rep. No. 934 at 19, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4656 (1984).

The non-exclusive cable franchises awarded by the LFAs or their member cities clearly advance the many federal policy objectives established by Congress. As indicated above, one of Congress' objectives in enacting the Cable Act is to promote the dissemination of diverse information.[11] The LFAs' franchises further this objective. All of the franchises, for example, contain requirements for PEG access channel capacity.[12] Such capacity can be required in accordance with Section 611(b) of the Cable Act, 47 U.S.C. § 531(b).[13] In this regard, the North Suburban Communications Commission franchises include an obligation for twelve 6 MHz PEG channels.[14] In the North Metro Telecommunications Commission franchise areas, Comcast agreed to dedicate six 6 MHz channels for PEG access purposes,[15] while in the South Washington County Telecommunications Commission franchise area five 6 MHz channels are dedicated for PEG access purposes.[16] The LFAs and/or the PEG access channel managers utilize this capacity as outlets for video programming that typically would not otherwise be disseminated or for the expression of unique viewpoints. Indeed, the public access channels

[11] *See, e.g.*, H.R. Rep. No. 934 at 30, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4667 (1984) ("One of the greatest challenges over the years in establishing communications policy has been assuring access to the electronic media by people other than the licensees or owners of those media. The development of cable television, with its abundance of channels, can provide . . . the meaningful access that . . . has been difficult to obtain.").

[12] One of the primary purposes of PEG access is to afford "groups and individuals who generally have not had access to electronic media with the opportunity to become sources of information in the electronic marketplace of ideas." H.R. Rep. No. 934 at 30, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4667 (1984).

[13] *See also* Minn. Stat. § 238.084, subd. 1(z) (requiring a franchise provision which establishes the minimum number of access channels that a franchised cable operator must make available).

[14] *See* Affidavit of Coralie A. Wilson at 2, attached hereto as Exhibit A.

[15] *See, e.g.*, § 6.1.2 of the Blaine, Minnesota franchise ordinance, *available at* www.northmetro15.com/commission/franchise.htm.

[16] *See* § 6.1 of the South Washington County Telecommunications Commission cable franchise. The South Washington County Telecommunications Commission franchise is available at www.swctc.org/documents/swctc%20franchise%20adopted%20103002.pdf.

provided pursuant to the LFAs' franchises provide an open forum for virtually any type of lawful speech or expression.

The public makes significant use of available public access channel capacity. For instance, in the North Suburban Communications Commission franchise areas, approximately 246 hours of original programming is cablecasted on four public access channels each month.[17] Overall, a total of about 1,558 hours of public access programming is cablecasted each month on the North Suburban Communications Commission public access channels.[18] Citizens and staff in the North Metro Telecommunications Commission franchise areas also produce an impressive amount of public access programming each year. In 2005, for example, an average of 100 hours of new public access programming was cablecasted each month on two public access channels.[19] In December of 2005, a total of 2,022 hours of public access programming was cablecasted.[20] All of these public access productions are made possible by hundreds of volunteers that produce and edit programming on a monthly basis.[21] As is evident from the amount of programming produced, the LFAs' public access channels function as a vibrant video "soapbox" for independent expression in the community.[22]

The public schools in the LFAs' franchise areas also make use of the PEG capacity provided pursuant to local cable television franchise agreements. Many local school districts use their channel capacity to cablecast board meetings, sporting events, concerts, and special events,

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[17] *See* Affidavit of Coralie A. Wilson at 2.
[18] *Id.* at 2-3.
[19] *See* Affidavit of Heidi Arnson at 2, attached hereto as Exhibit B.
[20] *Id.*
[21] *See* Affidavit of Coralie A. Wilson at 3 and Affidavit of Heidi Arnson at 2.
[22] H.R. Rep. No. 934 at 30, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4667 (1984) ("Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet . . . .").

such as award ceremonies and graduations.[23] The Mounds View School District, for example, produces an average of eight hours of original programming each month, and cablecasts 296 hours of repeat programming on a monthly basis.[24] The Roseville Area School District produces two or three programs a week during the school year.[25] Moreover, all of the educational access channels in the North Suburban Communications Commission franchise areas are programmed twenty-four (24) hours a day.[26] As with public access programming, much, if not all, educational access programming would not have an outlet (and probably would not be produced at all) but for the existence of PEG channel capacity included in local franchise agreements. This programming is an important source of information and entertainment, and allows public school districts to communicate with parents and students efficiently over a wide geographic area.

All of the LFAs have reserved channel capacity for governmental access use.[27] This capacity is primarily used to cablecast: (i) city council meetings and other municipal meetings (*e.g.*, planning commission meetings and parks and recreation commission meetings); (ii) election coverage (*e.g.*, candidate profiles and fora); (iii) local parades and events; (iv) talk shows with local officials and residents; (v) local debates; and (vi) locally produced documentaries.[28] As is evident from the variety of programming produced, government access channels are used to show local government at work, to provide transparency and accountability to constituents, to form a sense of cohesive community and civic pride and to communicate with

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[23] *See* Affidavit of Coralie A. Wilson at 3 and Affidavit of Heidi Arnson at 3.
[24] *See* Affidavit of Coralie A. Wilson at 3.
[25] *Id.*
[26] *Id.*
[27] *See, e.g.*, the Affidavit or Coralie A. Wilson at 3-4, § 6.1 of the South Washington County Telecommunications Commission franchise, § 6.2.1 of the North Metro Telecommunications Commission franchises, and the Affidavit of Heidi Arnson at 2-3.
[28] *See* Affidavit of Coralie A. Wilson at 3-4 and Affidavit of Heidi Arnson at 2-3.

local residents.[29] The LFAs' government access channels are used frequently, with approximately 1,051 hours of government access programming cablecasted each month on the discrete government access channels in the North Suburban Communications Commission franchise areas.[30] According to the North Metro Telecommunications Commission, there were approximately 5,717 government access program playbacks last year on the member cities' discrete government access channels.[31] The South Washington County Telecommunications Commission cablecasts twenty-four (24) government meetings each month and produces 175 original government programs each year. During local and state elections, candidate profiles are taped, candidate fora are cablecasted live, and live election results are reported on the government access channel.

In addition to PEG access channel capacity, the LFAs may require the construction of an institutional network and may mandate that capacity on the institutional network be designated for governmental and educational use.[32] All of the LFAs' franchises contain enforceable requirements for the construction and provision of an institutional network and for the use of capacity on the institutional network.[33] The technical specifications and characteristics of the individual networks may vary, but the fundamental purpose of each institutional network is the

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[29] H.R. Rep. No. 934 at 30, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4667 (1984) (One of the purposes of government access channel capacity is "showing the public local government at work.").

[30] *See* Affidavit of Coralie A. Wilson at 3-4.

[31] *See* Affidavit of Heidi Arnson at 3.

[32] *See, e.g.*, 47 U.S.C. § 531(b) (specifying that channel capacity on institutional networks may be dedicated for educational and governmental use) and 47 U.S.C. § 544(b) (stating that local franchising authorities may establish requirements for cable-related facilities and equipment). *See also* H.R. Rep. No. 934 at 68, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4705 (1984) ("Facility and equipment requirements may include requirements which relate to channel capacity; [and] system configuration and capacity, including institutional and subscriber networks . . . .").

[33] *See, e.g.*, § 7 of the South Washington County Telecommunications Commission franchise, Affidavit of Coralie A. Wilson at 4, § 7 of the North Metro Telecommunications Commission member city franchises and Affidavit of Heidi Arnson at 3.